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CORRESPONDENCE

CHRISTIAN SCIENCE PRACTICE—LEGALITY

(The following letter from Mr. Frederick A. Bangs of the Chicago Bar, Counsel for the Christian Science Committee on Publication for Illinois, is a commentary and a criticism directed toward a note that was published in this Journal, XXIV, 5, Jan.-Feb., 1934, pp. 957-960, under the title: "Faith-Healers—Practicing Without a License." We are glad to give this prominent place to Mr. Bangs and we do so, of course, without committing ourselves on the subject. The letter was addressed to Mr. Hugh Stuart Campbell of the Committee on Publication and by him transmitted to us.—Ed.)

The note, occasioned by the decision in *State v. Miller* (Iowa), 249 N. W. 141, which held that a person relying solely on faith, making no physical examination or diagnosis, nor publicly professing his ability to heal, is not required to secure a medical license, is evidently written on behalf of organized medicine.

This note, in effect, classifies Christian Science practice with that of hypnotism, mesmerism, itinerant vending of nostrums and medicines, magic healing, spiritism, spiritualism, occult healing, and ignorant medical practitioners, to cast opprobrium upon Christian Science healing. It cites cases of quack practice, and by innuendo denotes Christian Science healing as quackery.

State v. Miller, supra. a case favorable to Christian Science, is sought to be discredited.

Consider the cases cited by the author of the note:

Parks v. State

About *Parks v. State* (1902) (Ind.), 64 N. E. 862, the author says (p. 957):

"The majority of courts cognizant of legislative intent, have construed the term 'practice of medicine' in its broadest sense and have stated that the disciples of any particular school of healing were engaged in such practice, regardless of whether or not the prescription of drugs constitute a part of their cure. Such practitioners who eschew the use of drugs must nevertheless secure a license or be subject to the penalty provided in the Act."

This is neither the majority opinion, nor the law. The court states (l. c. 870):

"It is our conclusion that appellant was engaged in the practice of medicine, since he held himself out as a magnetic healer and his method of treatment was, at least in part, the method that medical practitioners sometimes employ."

The legislative intent, to which the author refers, is best evidenced by the fact that the Medical Practice Acts of forty-three of our states and territories (Indiana included) contain clauses excepting persons treating human ailments by prayer or spiritual means. Thus Christian Science is justified by their public policy. *Harding v. Glucose Co.*, 182 Ill. 528.

State v. Buswell

Of *State v. Buswell* (not Bushwell) (1894), 40 Nebr. 158, the author states that "a conviction of a Christian Scientist for the violation of the Medical Practice Act was upheld." The Christian Scientist was acquitted, not convicted.

This case involved a statute, in part as follows:

"Any person shall be regarded as practicing medicine . . . who shall . . . profess to heal . . . or otherwise treat any physical or mental ailment of another."

Appeal by the State to the Supreme Court resulted in the sustaining of exceptions. That court denied the right of Christian Scientists to practice because of the statute.

"The decision of the Nebraska court (in this Buswell case), therefore, is that while the practice of Christian Science is not a practice of medicine, as those terms usually and generally are understood, yet"

the statute of Nebraska giving a new definition to the "practice of medicine," includes therein Christian Science practice, but only because of such new definition. (*State v. Mylod*, 20 R. I. 16.)

The *Buswell* case is now rendered innocuous by a saving clause in the Nebraska Medical Practice Act (Comp. Stats. Neb. 1929, p. 1308, Sec. 71-1402), exempting the practice of religious tenets.

People v. Smith

The author says (p. 958):

"Nor are the religious tenets of any church a shelter behind which one may conduct the art of healing for pay, for if the practitioner is guilty of practicing medicine, he is none the less guilty although he also practices his religion." (*People v. Smith* (1911), 51 Colo. 27.)

This case involves an interpretation of the Colorado Medical Act, which then exempted "the practice of the religious tenets or general beliefs of any church whatsoever not prescribing medicine or administering drugs." The defendant styled himself a preacher and healer, claimed that his church was the "Church of the Divine Sci-

entific Healing Mission," a corporation, guided and controlled by divine power, with tenets in part as follows: "We believe, healing suffering humanity by laying on of hands, to be the gift of the divine Spirit."

The citing of this case by the author in support of his above statement as a general doctrine, is misleading.

The court held (a) that receiving pay for healing by spiritual means took such healing practice out of the practice of religion, and (b) that the defendant was not practicing divine healing in good faith.

The author knew of *People v. Cole* (N. Y.), 113 N. E. 790, at the time he cited this case, which construed a similar statute to exempt the practice of Christian Science in healing by prayer. The statute of Colorado has been amended, expressly sanctioning Christian Science practice with or without compensation.

Regina v. Beer

The author states (p. 959):

"Apparently there is but one reported case involving a prosecution against a Christian Scientist, where the patient died as the result of treatment administered,"

and cites *Regina v. Beer*, 32 Can. L. J. 416. The defendant, a Christian Science practitioner, was not found guilty, nor did the patient die "as the result of treatment administered." The court says:

"Mrs. Beer (the defendant) did not undertake to do any act, the doing of which or the omission of which might be dangerous to life."

State v. Marble

In Ohio the nisi prius courts started out well, and in *State v. Evans*, 9 Ohio Dec. 222 (1889), the nisi prius court held, discharging the defendant, that the practice of Christian Science was not within the medical statute, and said:

"Freedom of thought and worship in matters of religion is a birth-right of every citizen, and the legislature cannot take it away or abridge it in any way."

The legislature thereafter amended the statute, making it more inclusive, and another proceeding against a Christian Science practitioner was begun. The Court of Common Pleas again held that Christian Science practice was not prohibited. The State appealed to the Supreme Court, which court rendered the opinion, in *State v. Marble* (1905) 72 Ohio St. 21. This decision is fallacious.

The basis of Christian Science practice is prayer. The court, after acknowledging that it does not know "what Christian Science is," nevertheless holds that when practiced for compensation it is practicing medicine as defined by the Ohio statute. The court then holds that the practice of Christian Science in treating the sick, where a fee is charged, is not the practice of religion, and states:

"The subject of the legislation is not medicine and surgery; it is the public health or the practice of healing."

Therefore the only justification for including the practice of Christian Science in the prohibition of the statute must be that it is deleterious to public health; yet the court admits that prayer to God for the sick is not against public health, peace, or good morals. Thus the court anomalously declares harmful that which it admits to be harmless.

A citizen has the right to engage in any occupation not detrimental to public health, safety, and welfare, free from regulation by the exercise of the police power. *People v. Carolene Products Co.*, 345 Ill. 166.

Bennett v. Ware

In *Bennett v. Ware* (1908) (Ga.), 61 S. E. 546, a suit for malicious prosecution, the author so arranges his comments that they lead the casual reader to believe that the person involved in that case was a Christian Scientist, that he was guilty of fraud, and the court had erroneously construed the medical statute. The person involved was not a Christian Scientist, but a magic healer, who professed to heal without medicine. The court properly construed the law. The court said (p. 549):

"All the State has done has been to enact that when one wishes to practice medicine or surgery, he must as a protection to the public (not to the doctors), be examined and licensed by those skilled in surgery and medicine,"

that *they only* are required by the statute to have a license, and that the defendant was not barred by the statute from practicing "because he did not suggest, recommend, prescribe, or direct the use of any drug or medicine, appliance, or apparatus" (p: 547).

The court held the defendant did not violate the medical practice law, but deceived the people as to his pretended power, hence should recover no damages.

Dent v. West Virginia

Dent v. West Virginia (1888), 129 U. S. 114, involved the constitutionality of the medical act of West Virginia.

Plaintiff, for five years an eclectic physician, sought a license under the medical act then in force. The board of health refused the license, as he had not graduated from a reputable college, and had not taken the examination provided for by the act. Thereupon, he sought legal redress. The court held the act constitutional. The author incorrectly deduces the following from the decision:

"The courts have usually held that when the legislature in its discretion has seen fit to recognize only certain schools of medicine and establish medical boards to supervise such schools, that such recognition was exclusive of any other school of healing."

His conclusion does violence to the holding of the court. Christian Science was not involved.

Crane v. Johnson

The author (p. 959) unwarrantedly says about *Crane v. Johnson*, 37 S. Ct. 176:

"However, where skill is a necessary requisite in addition to mental and spiritual means, as in the case of psychoanalysts, the statutes of various states require that such practitioners procure medical licenses."

This statement is in no manner justified by this case. Crane for many years had practiced as a drugless healer in California, a system describing which the court says (p. 176):

"He does not employ either medicine, drugs, or surgery in his practice; but he does employ in practice faith, hope, and the processes of mental suggestion."

Plaintiff sued to enjoin the enforcement of a statute licensing drugless healers, but excepting therefrom "any treatment by prayer" (p. 177).

Plaintiff claimed the California statute violated the Fourteenth Amendment to the United States Constitution, in that the religious saving clause created an unfair discrimination against him and in favor of Christian Science practitioners; that the legislature made an unconstitutional classification of healers.

The United States Supreme Court, in rejecting plaintiff's claim, says (p. 178):

"To treat a disease there must be an appreciation of it, a distinction between it and other diseases, and special knowledge is therefore required.

And this was the determination of the State; but it determined otherwise as to prayer, the use of which it decided was a practice of religion."

This case decided that there is a substantial and legally classifiable difference between healing practices depending upon human concepts, and that which dependeth not upon human things but upon the divine. This case clearly distinguishes faith healers from Christian Scientists. Accord *State v. Wilcox*, 64 Kan. 789. It recognizes the legality of Christian Science practice.

In re First Church of Christ, Scientist

In re First Church, etc., 55 Atl. 536 (1903), was an application to incorporate a church. The court in denying the application, held that inaudible prayer used in the healing of the sick is injurious to the community.

Surely, this cannot in this enlightened age be considered sound authority.

State v. Mylod

The author (p. 958), citing *State v. Mylod* (1898), 20 R. I. 16, says:

"The minority view seems to be that the term 'practice of medicine' does not include those engaged in Christian Science healing, or faith healers who exclude the use of all drugs. Under this latter view Christian Scientists have not been required to secure a license on the ground that the provisions requiring a license were not for the purpose of compelling people suffering from a disease to resort to a particular remedy, but were designed to secure for those desiring medical remedies competent physicians to administer them."

This case is not the minority view, nor are "faith healers who exclude the use of all drugs" involved. Christian Scientists were held to be exempt from securing licenses because in exercising their religious liberty they healed by prayer.

The court determined that healing by Christian Science was not the practice of medicine.

People v. Pierson

In *People v. Pierson* (N. Y. Ct. of App.) (1903), 68 N. E. 243, the defendant was convicted of misdemeanor for refusing to provide medical attention for his infant daughter, an alleged pneumonia victim. The defense was that defendant's church (Christian Catholic Church of Chicago) taught that divine agencies would heal without any manual treatment.

Held: That the section under which defendant was prosecuted and the medical practice act taken together, made it a duty on the

part of the parent of a child to furnish medical aid of the type licensed under the medical practice act, whenever to a reasonable and prudent person it would be necessary for the preservation of the health of the infant.

Act held not to deny the constitutional guarantee of religious liberty.

This case was decided years before the amendment to the medical practice act exempting the practice of religion in healing, and before the decision of *People v. Cole* (N. Y.), *supra*, upholding that exemption in the case of Christian Science practice.

Other Cases

The language of the author, used on page 959, commencing with line 9 and ending with the citation of *People v. Pierson*, is misleading. There is not a case cited in that space by the author that involves a "faith healer." All involved medical practitioners, except *Regina v. Beer*, *supra*. The other cases are: (a) *State v. Barrow* (1920), 170 Okla. Crim. 340; (b) *People v. Hunt* (1915) 26 Cal. App. 514; (c) *Hampton v. State* (1905) 50 Fla. 55; (d) *Rice v. State* (1844) 8 Mo. 561; (e) *Commonwealth v. Thompson* (1809) 6 Mass. 134; (f) *State v. Schulz* (Ia.) 8 N. W. 469.

The authorities distinguish mortal mind healing, such as hypnotism, mesmerism, itinerant vending of nostrums and medicines, magic healing, spiritism, spiritualism, occult healing, ignorant medical practitioners, and material medica, from spiritual healing (Christian Science). That distinction is clearly drawn in *People v. Vogelgesang* (1911) 221 N. Y. 290, wherein Justice Cardozo (p. 293) says:

"The meaning of the act is made plain . . . Immunity is granted to those who practice their religious tenets, but always in such a form as to confine the exemption to spiritual ministrations."

On page 294, he says:

"Through all this legislation there runs a common purpose. The law exacts no license for ministrations by prayer or by the power of religion, but one who heals by other agencies must have the training of the expert."

Thus it is clearly established that (as in Christian Science practice) (p. 293):

"The profession and practice of the religion must be itself the cure. The sufferer's mind must be brought into submission to the Infinite Mind, and in this must be the healing. The operation of the power of Spirit must be not indirect and remote, but direct and immediate."

This is true, whether the healing be with or without compensation (p. 294), and is sound doctrine. (*Crane v. Johnson*, 242 U. S. 339; *People v. Cole*, 113 N. E. 790; *People v. Verbun*, 8 Pac. (2), 1083; *People v. Witte*, 315 Ill. 282; *State v. Mylod*, 20 R. I. 16.)

Conclusion

The statement of the author at the close of his article, to the effect that Christian Science practice should be enjoined, is illogical.

The law, as it has developed, is thus stated by Justice Cardozo in *People v. Vogelgesang*, *supra*, quoted and approved in *State v. Verbun* (Wash.) 9 Pac. (2), 1083):

"In *People v. Cole*, *supra*, we held that the exception protected the practitioners of Christian Science, who taught as part of their religion the healing power of mind . . . The tenets to which it accords freedom, alike of practice and of profession, are not merely the tenets, but the *religious* tenets of a church."

The modern trend announced by New York, Illinois, Iowa, and other States, in recent decisions, and the pronouncement of nearly all legislative bodies signify a changed attitude since an earlier day when some adverse decisions were rendered relative to the practice of faith healing. Talk of enjoining such practice is futile in the writer's opinion.